IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 725 of 1998

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DAHYABHAI BHIKHABHAI BHANGI

Versus

STATE OF GUJARAT

Appearance:

MR CL SONI for Petitioner

MR KP RAVAL, APP for Respondent No. 1

MR EE SAIYED for Respondent No. 2, 3, 4

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 30/03/2000

ORAL JUDGEMENT

1. This is a revision application under section 397 read with section 401 of the Code of Criminal Procedure at the instance of the original complainant, who had filed a complaint against the three accused, the respondent nos.2 to 4 herein, alleging that on the given day and place they had committed offences under sections

324, 323, 504 read with section 114 of IPC as also under section 135 of the Bombay Police Act, and under section 3(1)(x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The Special Judge who tried the case, by his judgement and order acquitted all the accused of all the charges levelled against them. Hence the present revision at the instance of the original complainant.

2. It is pertinent to note that the impugned judgement and order is one of acquittal, acquitting of the three accused of all the charges. However, learned counsel for the petitioner submitted that although the judgement and order of acquittal may be sustainable, (i.e. not challengeable) in respect of offences under Indian Penal Code and the Bombay Police Act, learned Special Judge has not considered the evidence at all and not given any specific finding as regards the charge under section 3(1)(x) of the Atrocities Act. He therefore submitted that the matter requires to be remanded back to Special Judge for a fresh decision on the aspect of the charge under the Atrocities Act.

3. To my mind the very submission is based on a misconception, and also based on a misunderstanding of the judgement and order of acquittal.

4. The Special Judge found on the basis of the medical evidence on record that the injuries sustained by the complainant were caused by a hard and blunt substance and that there was no knife injury or injury caused by a sharp cutting instrument, whereas the complaint asserts that the complainant had suffered one knife injury on the head. Thus, the medical evidence is not in consonance with the assertions made in the complaint.

5. The Special Judge has noted various other material contradictions between the various prosecution witnesses, which create a doubt as to whether the incident of attack on the complainant by the accused took place at all.

6. Furthermore, the complainant has examined himself at Exh.12 whereby he has deposed that he was ultimately saved from the attack by one Isha Rupshi and Shanti Bhika. Isha Rupshi is a relative of complainant and has been examined at Exh.19, who has not supported the prosecution version at all.

7. The learned Special Judge, after considering various other infirmities in the prosecution evidence,

ultimately came to the conclusion that it could not possibly be found beyond reasonable doubt that the accused no.1 had attacked the complainant with the knife and accused nos.2 and 3 had attacked the complainant with sticks and that therefore they are entitled to benefit of doubt.

8. It is true that the Special Judge has not specifically dealt with the charge under the Atrocities Act. However, it is obvious from the complaint itself that the accused are alleged to have uttered scandalous and humiliating abuses to the complainant at the commencement of the attack. Once it is found on the appreciation of evidence that the accused are entitled to the benefit of doubt, and that the attack itself is in doubt, it goes without saying that any scandalous and humiliating language alleged to have been used at the commencement of the attack does not require any separate and independent consideration. Since it was the case of the complainant that there were first abuses and then the attack and once it is found on the evidence that it could not be said that there was an attack by the accused, the question of independent consideration of abuses, etc. would not arise.

9. In the premises aforesaid, I am of the view that the impugned judgement and order of the learned Special Judge is eminently sustainable and does not require interference by this court. This revision is, therefore, dismissed. Rule is discharged.

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